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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,344

05/23/2005

Jan De Kroon

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EXAMINER

HAIDER, SAIRA BANO

ART UNIT

PAPER NUMBER

1711

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/511,344

Applicant(s)

DE KROON ET AL.

Examiner

Saira Haider

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5 and 8-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,5 and 8-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/31/2006 has been entered.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1, 5, 8-11, 16, and 18-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmitz et al. (Us 2002/0082352).
4. Schmitz discloses multilayer composites, where a polyamide adhesive layer bonds a polyolefin molding composition (abstract). The polyamide includes a branched polyamine-polyamine polymer, and the polyolefin layer includes polypropylene (PP) or linear low-density polyethylene (LLDPE) (¶ 32-42, 52). Hence, Schmitz would envisage the polyolefin layer solely comprising LLDPE. In reference to claim 10, it is the examiner's position that since the polyolefin layer of Schmitz is identical to that claimed by applicant, then the polyolefin layer of Schmitz possesses the good bubble stability property, as claimed by applicant. In reference to claim 8, Schmitz discloses that the polyolefin can be prepared by, for example, the Ziegler-Natta process, which can result in the formation of linear polypropylene. Hence Schmitz would envisage using linear PP in the polyolefin layer. It is noted that Schmitz discloses that the multilayer composite can

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be formed via coextrusion blow molding, hence meeting the process claims and the newly added limitation to claim 5 (§ 98).

5. In reference to the newly added terminology "consisting essentially of," as per MPEP § 2111.03, the transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. *In re Herz*, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976). However, for the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be construed as equivalent to "comprising." See, e.g., *PPG*, 156 F.3d at 1355, 48 USPQ2d at 1355. If an applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention. *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964).

6. Applicant has not fulfilled the above requirements regarding utilization of the transitional phrase "consisting essentially of," hence the transitional phrase is construed as equivalent to "comprising." Therefore, the Schmitz anticipation rejection is rendered valid.

Claim Rejections - 35 USC § 103

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

8. Claims 12-15 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz in view of Johnston (US 4,654,240).

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9. The Schmitz reference applies as above. However Schmitz fails to disclose the thickness of each layer. Hence attention is directed towards the Johnston reference. Johnston discloses that the multilayer film has a total thickness of about 75 to about 200 microns. The inner layer comprising either LLDPE or polypropylene has a thickness of about 50 to about 120 microns. The core layer comprising polyamide has a thickness of about 15 to about 50 microns. Johnston discloses that the combined dimensions of the core, inner and outer layers provide an improved container, if the total thickness is less than 75 microns the impact strength will not be sufficient, and if the total thickness is in excess of 200 microns the container will lack flexibility. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to form the multilayer film, comprising the composition of Schmitz, in the dimensions taught by Johnston in order to ensure sufficient impact strength and flexibility.

10. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmitz.

11. Schmitz fails to disclose that the blown film has a blow-up ratio of from 20 to 40 %. It would have been obvious to one of ordinary skill in the art at the time of the invention to control the blow-up ratio, wherein the blow-up ratio of the blown film is a readily manipulatable parameter. The motivation to modify the blow-up ratio is to control the diameter of the final product while blown in the die or mold cavity, instead of modifying the size of the die or cavity. It is noted that the final product of Schmitz includes pipes, filling port or a container, in particular for conveying or storing liquids or gases (§ 92).

12. Claims 1 and 18-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bayer in view of Johnston.

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13. Bayer discloses branched polyamide molding materials that are applied to polyolefin layers to form multilayer films (Col. 2, Line 43 to Col. 3, Lines 25; Col. 6, Lines 15-23). Blow molding is noted as a preferred production method for the multilayer films (Col. 5, Line 64 to Col. 6, Line 7).

14. Bayer fails to specify polypropylene or LLDPE as the polyolefins. Hence attention is directed towards the Johnston reference (Column: Lines: abstract; 2:32-58; 3:68-4:4, 4:21-35, Table 1). Johnston teaches laminate films comprising outer polyolefin layers and a polyamide core layer. The reference teaches that containers are to be formed from the films, and that sterilization temperature controls the selection of the heat sealing inner layer. LLDPE and polypropylene layer are both suggested for the inner layer. LLDPE is also chosen when the sterilized medical product is filled in the container. Polypropylene is one of two materials to be used for the outer layer, especially linear biaxially oriented polypropylene. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to bond the polyamides of Bayer to either or both of polypropylene and LLDPE to provide a sterilizable container usable at a desired sterilization temperature.

15. In reference to claims 22-25, Johnston discloses that the multilayer film has a total thickness of about 75 to about 200 microns. The inner layer comprising either LLDPE or polypropylene has a thickness of about 50 to about 120 microns. The core layer comprising polyamide has a thickness of about 15 to about 50 microns. Johnston discloses that the combined dimensions of the core, inner and outer layers provide an improved container, if the total thickness is less than 75 microns the impact strength will not be sufficient, and if the total thickness is in excess of 200 microns the container will lack flexibility. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to form the multilayer film, as taught by the combination of Bayer and

Johnston, in the aforementioned dimensions in order to ensure sufficient impact strength and flexibility.

Response to Arguments

16. Applicants have argued that the terminology “consisting essentially of” renders the Schmitz anticipation rejection invalid. The examiner has explained the interpretation of the transitional phrase “consisting essentially of” above, and maintains the Schmitz anticipation rejection.

17. In response to applicants’ argument that Johnston does not disclose the use of branched polyamide in blow-molded film, it is noted that both the Schmitz and Bayer references disclose the use of branched polyamides in blow molded films. Hence, it is not necessary that the Johnston reference disclose these limitations. Additionally, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

18. In response to applicants’ argument that the Schmitz reference does not teach the high bubble stability, it is noted that the examiner has established an inherency argument based on the substantially identical products of Schmitz and applicant. The burden has shifted to applicant to prove that the prior art products do not necessarily or inherently possess the characteristics of his [or her] claimed product. Whether the rejection is based on 'inherency' under 35 U.S.C. 102, on 'prima facie obviousness' under 35 U.S.C. 103, jointly or alternatively, the burden of proof is the same...[footnote omitted]." The burden of proof is similar to that required with respect to product-by-process claims. *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980) (quoting *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433-34 (CCPA 1977)).

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19. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., bubble stability simultaneously with high tear strength or high gloss) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

20. Applicant's arguments with respect to the rejection of claim 16 utilizing the Joachimi et al. reference have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saira Haider whose telephone number is (571) 272-3553. The examiner can normally be reached on Monday-Friday from 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Saira Haider

Examiner

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A handwritten signature in black ink, appearing to read 'J. Seidleck', with a stylized, cursive flourish at the end.

James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700